IN THE HIGH COURT OF JUDICATURE AT BOMBAY

TESTAMENTARY AND INTESTATE JURISDICTION

MISCELLANEOUS PETITION NO.30 OF 2002

IN

TESTAMENTARY PETITION NO.379 OF 2001

1,Ms.Rani Moti Advani & others. ...Petitioners.

vs.

1. Dr. Pushpa J. Gulrajani & others. ...Respondents.

Mr.K.M.Jawale, for Petitioners.

Mr.H.N.Thakkar with Ms.Bardoza i/b. M/s.Thakore Jariwala & Associates, for Respondents.

CORAM: D.K.DESHMUKH,J.

DATED: 30th June, 2006.

P.C.:-

1. The petitioners have filed this petition under Section 263 of the Indian Succession Act for revocation of the probate granted by order dated 3.12.2001 passed in the Testamentary Petition no.379 of 2001. By that petition, the probate of the Will of one Mr.Moti Jawharmal Gulrajani was granted. According to the petitioners, a flat being flat no.8, Milan, First floor, Plot no.688, Sandeepany Co-operative Housing Society, 15th Road, Khar (West), Mumbai-400052,

was owned by the wife of Moti Gulrajani by name Smt.Indra Moti Gulrajani. She died before her husband Mr.Moti Gulrajani leaving behind a Will. By that Will she bequeathed 70% of the flat in favour of the petitioners and 6th respondent and 30% in favour of 1st respondent. . In short, according to the petitioners, Smt.Indra Moti Gulrajani did not bequeath the flat to her husband and only a life interest was granted in his favour. After some time of the death of Smt.Indra, Mr.Moti i.e. her husband died. He left behind a Will bequeathing the flat and his property in favour of Respondent no.1 and others to the exclusion of the petitioners. The petitioners have filed this petition for revocation of the Will on the ground that before the probate petition was filed by the respondent no.1 for getting probate of the Will left behind by Mr.Moti, the petitioners had informed Respondent no.1 that according to the petitioners, Smt.Indra had left behind a Will wherein the property was not bequeathed in favour of Mr.Moti, her husband. According to the petitioners, this fact should have been disclosed by the respondent no.1 to this Court and concealment of this fact by Respondent no.1 from the Court makes the probate liable for revocation. The petition is opposed by the respondent no.1. According to respondent no.1, because the petitioners are claiming interest in the property adverse to the interest of the testator, even if the petitioners had filed a caveat in the probate proceedings, the caveat would not have been maintainable and

therefore, the petition for revocation of the Will for that reasons is also not maintainable.

2. I have heard the learned Counsel for both the sides. I have perused the judgment cited by the learned Counsel appearing for both the sides, viz. judgment of the Calcutta High Court in the Case "Promode Kumar Roy Vs. Sephalika Dutta, AIR 1957 Calcutta 631", the judgment of the learned single Judge of this Court in the case "Arjundas s/o. Narayandas Panjwani & others. Vs. Vera Mishra of Bombay and another" 1995(3) Bom. C.R. 497", as also the judgment of the Supreme Court in the case of "Shanta G.Z. Mehta (dead) by Lrs Vs. Sarla J. Mehta and others, (2002) 10 SCC 730" . Perusal of these judgments shows that it is now to be taken as a settled law that if in a probate petition a caveat is filed by a person who disputes the title of the testator, then caveat of such a person is not maintainable and has to be rejected. In the present case, it is obvious that the petitioners are claiming that Mr.Moti Gulrajani whose Will has been probated had no interest in the flat which he could bequeath and therefore, the petitioners are disputing the title of the testator to the property, and therefore, the caveat filed by the petitioners would not have been maintainable even if it had been filed during the pendency of the probate petition before the probate was granted and therefore, the petitioners would not have locus to file this petition for revocation of

the probate. Hence, the miscellaneous petition is disposed of.

3. The learned Counsel appearing for Respondent no.1 to 5 states that the Respondents will continue to abide by the statement made by the Respondent nos.1 to 5 which is recorded in the present petition, for a period of four weeks from today.